

ANTICIPATING SECURED CLAIMS

I. Creditor's Perspective

A. How does a Creditor secure his debt?

1. Purchase Money Security Interest

automatic
Article.

a. By financing the sale of goods up to \$5,000.00 in Maryland, perfection of the lien is under 9-302(d) of the Commercial Law

b. Does not require a Financing Statement or UCC-1 filed.

1.) However, if the goods purchased become a fixture of real property, perfection must be by recording the lien against the Deed to the property.

2. Perfection by filing

a. Real Property

1.) Perfection by recording the mortgage or Deed of Trust in the Office of Land Records of the county where the property is located.

b. Automobile Liens

1.) Perfected by filing the lien with the MVA in Glen Burnie.

2.) Lien does not have to be the result of a purchase of the vehicle to be perfected.

c. Household Goods and Appliances

1.) The Creditor will secured "big ticket" items such as riding lawn tractors, diamond jewelry, computer systems, etc.

a.) The object is to secured items with higher total market value than the Debtor has available exemptions.

1.) By caselaw, the Court has held that firearms are not household goods

- a. Rifles and shotguns are not primarily used in the house.
- b. Not necessary for the Debtor's "fresh-start".

B. Protecting the Secured Claim

- 1. Upon the Debtor's filing of his petition the Creditor has two choices
 - a. Do nothing and have his debt wiped-out by the discharge and charge the entire balance owed against his profits for the year.
 - b. File his secured claim and negotiate with the Debtor's counsel for the balance or a settlement based upon the value of the collateral.
- 2. Pursuant to Section 521 of the Code the Debtor must perform one of three options.
 - a. Reaffirmation
 - 1.) When the value of the collateral exceeds the amount of the debt.
 - b. Redemption
 - 1.) When the value of the collateral is less than the amount owed.
 - c. Surrender
 - 1.) When the Debtor cannot afford to reaffirm or redeem.
 - 2.) When the Debtor decides he/she no longer wants or needs the collateral.
 - d. If the Debtor does not perform hi/her intent by discharge the lien against the collateral flows through the discharge
 - 1.) The Creditor is still entitled to recover its collateral through repossession, foreclosure or replevin.

vehicle inspection look-up at the time the debt was

- made.
2. Debtor's counsel should not expect that the Creditor will simply rollover because the Debtor(s) have filed for relief.
 3. The Creditor is usually more than willing to negotiate a settlement for less than its balance any time before the Debtor has defaulted in payments and the Creditor is threatening to file to lift the stay.

II. CREDITOR'S PERSPECTIVE ON LIEN AVOIDANCES

A. Proper Service of the Motion

1. Service of a Lien Avoidance must be made on the Resident Agent of the Creditor, not on the branch office.
 - a. The Debtor usually only has the address of the branch office where they send their payments.
 - 1.) Debtor's counsel must determine the proper place and person to serve from S.D.A.T.

B. Motion must be filed to avoid lien

1. If there is no Motion To Avoid Lien filed, and the Creditor has filed a secured claim, the claim will be allowed, even if there is little or no equity in the collateral.

C. Need to be filed before or at the time of the 341 Meeting

1. Any disputes as to values, equity, or exemptions can be addressed and handled timely since all parties are present in the same room at the 341 meeting.

D. Creditor's Responses

1. Unless there is a "slam-dunk" winner for either the Debtor or Creditor, a compromised amount is simple to work out.
 - a. Ignoring a Creditor is the easiest way to create a problem that otherwise would not exist.

nature.

3. Respondent admits that while it holds a lien on certain of the Debtors items claimed in Paragraph 3, the full extent of the collateral pledged to Respondent by the Debtors, greatly exceeds the listing of Paragraph 4 (See Exhibit B).

4. Respondent denies the allegations of Paragraph 4 of the Motion to the extent that the Debtors completed the Identification of Security within ninety (90) days of the filing of their petition, and placed their own market values on each item pledged, and pursuant to 11 U.S.C. section 522 and Md. Cts. & Judicial Proc. Code Ann., Section 11-504, the Debtors' combine allowed exemptions are not sufficient to fully exempt the collateral pledged, and thus, the Respondents' lien cannot be avoided in total as prayed by the Debtors, and therefore the Motion should be denied as a matter of law, and demands strict proof thereof (See Exhibit B).

5. Respondent does not have sufficient knowledge to admit or deny the allegations of Paragraph 5 of the Motion, and demands strict proof thereof

6. Respondent denies the allegations of Paragraph 6 of the Motion and demands strict proof thereof.

WHEREFORE, the Respondent, Beneficial Maryland, Inc., prays that this Honorable Court enter an Order:

a. That the Motion To Avoid Lien be denied, or in the alternative, be limited solely to those items pledged as collateral to Respondent which appear on the Debtors' Schedule of Personal Property and listed on the Debtors B-4 exemptions, up to the limits of the allowed exemptions, and;

b. For such other and further relief as Respondent's cause may require.

H. Fred Cimildora
EDWARD J. BIRRANE, JR., CHARTERED
28 Allegheny Avenue
Suite 606
Towson, Maryland 21204
(410) 823-0464

Attorneys for Respondent